



DEPARTMENT OF THE INTERIOR

Office of Natural Resources Revenue

30 CFR Parts 1206, 1208, 1217, and 1220

[Docket No. ONRR-2022-0001; DS63644000 DRT000000.CH7000 223D1113RT]

RIN 1012-AA32

Electronic Provision of Records During an Audit

AGENCY: Office of Natural Resources Revenue (“ONRR”), Interior.

ACTION: Final Rule.

SUMMARY: ONRR is amending its regulations to allow ONRR and other authorized Department of the Interior (“Department”) representatives the option to require that an auditee use electronic means to provide records requested during an audit of an auditee’s royalty reporting and payment.

DATES: This final rule is effective 30 days from the date of publication in the *Federal Register*.

FOR FURTHER INFORMATION CONTACT: For questions concerning this final rulemaking, contact Ginger Hensley, Regulatory Specialist, by phone at 303-231-3171, or by email at ONRR_RegulationsMailbox@onrr.gov.

SUPPLEMENTARY INFORMATION:

I. Explanation of Final Rulemaking

ONRR is responsible for the efficient, timely, and accurate collection and disbursement of revenue originating from the leasing and production of natural resources and energy, including oil, gas, coal, geothermal and other solid minerals, from Federal and Indian lands. *See* 30 U.S.C. 1711; Sec. Order. 3299, as amended; U.S. Department of the Interior Departmental Manual, 112 DM 34 (Dec. 9, 2020). To verify that lessees and other persons accurately report and pay royalties and other amounts due, ONRR audits royalty and other reporting and payment. 30 U.S.C. 1711(c).

Various sections of ONRR's regulations, which were adopted in accordance with the Congressional directive found in 30 U.S.C. 1711(a), provide for audits by ONRR and other Department representatives. These sections include:

- (1) 30 CFR 1206.250(c), which addresses audits for Federal coal leases.
- (2) 30 CFR 1206.350(b), which addresses audits for Federal geothermal leases.
- (3) 30 CFR 1206.450(c), which addresses audits for Indian coal leases.
- (4) 30 CFR 1208.15, which addresses audits for Federal royalty oil taken in kind.
- (5) 30 CFR 1217.50, which addresses audits for Federal and Indian oil and gas leases.
- (6) 30 CFR 1217.300, which addresses audits for Federal geothermal leases.
- (7) 30 CFR 1220.033(e), which addresses audits for oil and gas net profit share leases.

States or Indian Tribes sometimes perform the audits authorized by these sections under delegations or cooperative agreements with ONRR. *See* 30 U.S.C. 1732 and 1735; 30 CFR Parts 1227 and 1228.

Congress and the President mandate that Federal agencies use new technologies to improve Government operations. For example, the Paperwork Reduction Act of 1995, Public Law 104-13, and the Information Technology Management Reform Act of 1996, Public Law 104-106, authorize the use of new technologies to improve the productivity, efficiency, and effectiveness of Government programs. *See* 44 U.S.C. 3501(10), 44 U.S.C. 3504(a)(1)(B)(vi) and (h), 40 U.S.C. Parts 11302 and 11303. In addition, the Office of Management and Budget ("OMB") issued a memorandum on June 28, 2019, entitled "Transition to Electronic Records" (M-19-21), directing Federal agencies to ensure that all Federal records are created, retained, and managed in electronic formats, with appropriate metadata.

To meet these Federal mandates and to take advantage of rapidly improving technologies for the electronic transmission and storage of records, ONRR is amending its regulations to allow ONRR and other Department representatives the option to require that records be provided for an audit by secure electronic means. Because this amendment applies to all oil, gas,

geothermal, coal, and other solid mineral royalty audits performed by ONRR or other

Department representatives, this final rule:

(1) Adds a new section, 30 CFR 1217.10, under the general provisions to 30 CFR Part 1217 – Audits and Inspections, to specify the methods by which ONRR or other Department representatives can require an auditee to provide records during an audit.

(2) Adds references to Part 1217 in §§ 1206.250(c), 1206.350(b), 1206.450(c), 1208.15, and 1220.033(e) to clarify that ONRR or an authorized State or Tribe may require an auditee to provide records for an audit by one or more of the methods specified in the new 30 CFR 1217.10.

Auditees keep most, if not all, records for natural resources revenue reporting and payment in electronic format and generally prefer, when under audit, to provide the records electronically. For records that an auditee maintains only in electronic form, the electronic production and transmission of these records for an audit avoids printing and other costs of submitting records in paper form. For records an auditee maintains in paper form, technologies exist to readily allow for the conversion of these records to electronic form when needed for an audit. Providing records electronically helps avoid administrative costs and expenses to the Department and auditees for preparing, submitting, processing, and preserving paper records. ONRR or other Department representatives will still sometimes need to inspect paper records or to conduct an entrance or other conference at an auditee’s business location. However, the option to require that records be produced and transmitted electronically should shorten or possibly eliminate onsite audit activities in appropriate situations. It will also help ONRR and auditees to better navigate disruptive events that may make onsite inspection of records more burdensome, impractical, or unavailable.

ONRR regulations specifically provide that information that “constitutes trade secrets or commercial or financial information that is identified as privileged or confidential, or that is exempt from disclosure under the Freedom of Information Act, 5 U.S.C. 552, shall not be

available for inspection or made public or disclosed without the consent of the lessee, except as provided by law or regulation.” 30 CFR 1210.207. To preserve the confidentiality of records produced electronically for use in an audit, this final rule allows Department representatives the option to require that records be provided electronically only by means which are secure. A secure means of transmission involves the use of password protection, encryption, or other security measures, to prevent unauthorized access to the transmission by a third-party. The Department maintains computer systems and updates or replaces software as technology changes, which allows auditees to securely transmit records for an audit. When requesting electronic production and transmission of records, a Department representative will specify the format in which the records are to be transmitted electronically and provide instructions for submitting the records securely. Factors that contribute to what ONRR or a Department representative consider acceptable include the availability and completeness of documentation and the availability of applications that can interpret it.

ONRR published the Electronic Provision of Records During an Audit proposed rule on September 16, 2022 (87 FR 59350). During the proposed rule’s 60-day comment period, ONRR received one comment. The commentor stated support for initiatives and technologies to improve government operations. ONRR appreciates the commentor’s support for this rulemaking. ONRR received no other comments on the proposed rule.

Following the proposed rule’s publication, ONRR published a final rule to amend its regulations pertaining to Federal and Indian coal valuation. (88 FR 47003). Because that final rule amended the paragraph structure in two sections covered by this rulemaking, ONRR revised the amendatory instructions in this final rule from what it had provided in the proposed rule. Specifically, this final rule revises §§ 1206.250(c) and 1206.450(c) in the same manner ONRR’s proposed rule had proposed to revise §§ 1206.250(d) and 1206.450(d).

This final rule is published pursuant to authority delegated to ONRR by the Secretary of the Interior. *See* 30 U.S.C. 189; 30 U.S.C. 1751; 43 U.S.C. 1334; 30 U.S.C. 1023; Secretary's Order 3299, sec. 5; and Secretary's Order 3306, sec. 3-4.

II. Procedural Matters

A. Regulatory Planning and Review (Executive Orders 12866, 13563 and 14094)

Executive Order 14094 reaffirms the principles of E.O. 12866 and E.O. 13563 and states that regulatory analysis should facilitate agency efforts to develop regulations that serve the public interest, advance statutory objectives, and are consistent with E.O. 12866, E.O. 13563, and the Presidential Memorandum of January 20, 2021 (Modernizing Regulatory Review). Regulatory analysis, as practicable and appropriate, shall recognize distributive impacts and equity, to the extent permitted by law. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. ONRR developed this final rule in a manner consistent with these requirements.

E.O. 12866, as reaffirmed by E.O. 13563 and E.O. 14094, provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is not significant.

B. Regulatory Flexibility Act

ONRR certifies that promulgation of this final rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.* because it only requires auditees—when the Department requests—to provide records and files electronically that they are otherwise required to provide in hard copy at their business premises.

C. Congressional Review Act

This final rule is not a major rule under 5 U.S.C 804(2), the Congressional Review Act.

This final rule:

(1) Does not have an annual effect on the economy of \$100 million or more.

(2) Will not cause a major increase in costs or prices for consumers; individual industries; or geographic regions.

(3) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

D. Unfunded Mandates Reform Act

This final rule does not impose an unfunded mandate on State, local, or Tribal Governments or the private sector of more than \$100 million per year. This final rule does not have a significant or unique effect on State, local, or Tribal Governments or the private sector. Therefore, ONRR is not required to provide a statement pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

E. Takings (E.O. 12630)

Under the criteria in section 2 of E.O. 12630, this final rule does not have any significant takings implications. This final rule does not impose conditions or limitations on the use of any private property because the rule only amends how a lessee, operator, payor, and other person must produce and transmit records upon request. This final rule does not require a takings implication assessment.

F. Federalism (E.O. 13132)

Under the criteria in section 1 of E.O. 13132, this final rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. This final rule does not impose administrative costs on States or local Governments or substantially and directly affect the relationship between the Federal and State Governments. Thus, a federalism summary impact statement is not required.

G. Civil Justice Reform (E.O. 12988)

This final rule complies with the requirements of E.O. 12988. Specifically, the final rule:

(1) Meets the criteria of Section 3(a), which requires that ONRR review all regulations to eliminate errors and ambiguity in order to minimize litigation.

(2) Meets the criteria of Section 3(b)(2), which requires that all regulations be written in clear language using clear legal standards.

H. Consultation with Indian Tribal Governments (E.O. 13175)

ONRR strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and in recognition of their right to self-governance and Tribal sovereignty. ONRR evaluated this final rule and the criteria in E.O. 13175 and determined that the final rule will not have substantial direct effects on Federally recognized Indian Tribes. Thus, consultation under ONRR's Tribal consultation policy is not required.

I. Paperwork Reduction Act

This final rule does not contain any new information collection requirements or meet the definition of "collection of information" under 44 U.S.C. 3502(3). A submission to OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is not required.

J. National Environmental Policy Act

This final rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 ("NEPA") is not required because the final rule is categorically excluded. *See* 43 CFR 46.210(i) and the Department's Departmental Manual, Part 516, section 15.4.D. ONRR has determined that this final rule is not involved in any of the extraordinary circumstances under 43 CFR 46.215 that require further analysis under NEPA. The procedural changes resulting from these amendments have no consequence with respect to the physical environment. This final rule will not alter in any material way natural resource exploration, production, or transportation.

K. Effects on the Energy Supply (E.O. 13211)

This final rule is not a significant energy action under the definition in E.O. 13211 and,

therefore does not require a Statement of Energy Effects.

L. Clarity of This Regulation

ONRR is required by E.O. 12866 (section 1(b)(12)), E.O. 12988 (section 3(b)(1)(B)), and E.O. 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule ONRR publishes must:

- (1) Be logically organized.
- (2) Use the active voice to address readers directly.
- (3) Use common, everyday words and clear language rather than jargon.
- (4) Be divided into short sections and sentences.
- (5) Use lists and tables wherever possible.

If you feel that ONRR has not met these requirements, send your comments to ONRR_RegulationsMailbox@onrr.gov. To better help ONRR revise this final rule, your remarks should be as specific as possible. For example, you should tell ONRR the numbers of the sections or paragraphs that are not clearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

III. List of Subjects

30 CFR Part 1206

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Oil and gas exploration, Public lands-mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 1208

Continental shelf, Government contracts, Mineral Royalties, Public lands-minerals resources, Reporting and recordkeeping requirements, Small businesses.

30 CFR Part 1217

Coal, Government contracts, Mineral royalties, Oil and gas exploration, Public lands-mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 1220

Accounting, Continental Shelf, Government contracts, Mineral royalties, Oil and gas exploration, Public lands-mineral resources, Reporting and recordkeeping requirements.

Howard Cantor,
Acting Director, Office of Natural Resources Revenue.

Authority and Issuance

For the reasons discussed in the preamble, ONRR is amending 30 CFR parts 1206, 1208, 1217, and 1220 as set forth below:

PART 1206—PRODUCT VALUATION

1. The authority citation for part 1206 continues to read as follows:

Authority 5 U.S.C. 301 *et seq.*, 25 U.S.C. 396, 396a *et seq.*, 398, 398a *et seq.*, 2101 *et seq.*; 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1001 *et seq.*, 1701 *et seq.*; 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, and 1801 *et seq.*

Subpart F—Federal Coal

2. Amend § 1206.250 by revising (c) to read as follows:

§ 1206.250 What is the purpose and scope of this subpart?

* * * * *

(c) ONRR may audit and order you to adjust all royalty payments. ONRR or an authorized State may require you to provide records for the audit by one or more of the methods specified in 30 CFR 1217.10.

Subpart H—Geothermal Resources

3. Amend § 1206.350(b) by revising the text to read as follows:

§ 1206.350 What is the purpose and scope of this subpart?

* * * * *

(b) ONRR may audit and order you to adjust all royalty and fee payments. ONRR or an authorized State may require you to provide records for the audit by one or more of the methods specified in 30 CFR 1217.10.

* * * * *

Subpart J—Indian Coal

4. Amend § 1206.450 by revising the section heading and paragraph (c) to read as follows:

§ 1206.450 What is the purpose and scope of this subpart?

* * * * *

(c) ONRR may audit and order you to adjust all royalty payments. ONRR or an authorized Tribe may require you to provide records for the audit by one or more of the methods specified in 30 CFR 1217.10.

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PART 1208—SALE OF FEDERAL ROYALTY OIL

5. The authority citation for part 1208 continues to read as follows:

Authority 5 U.S.C. 301 *et seq.*; 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1701 *et seq.*; 31 U.S.C. 9701; 41 U.S.C. 601 *et seq.*; 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, and 1801 *et seq.*

Subpart A—General Provisions

6. Revise § 1208.15 to read as follows:

§ 1208.15 Audits.

Audits of the accounts and books of lessees, operators, payors, and/or purchasers of royalty oil taken in kind may be made annually or at such other times as may be directed by ONRR. Such audits will be for the purpose of determining compliance with applicable statutes, regulations, and royalty oil contracts. ONRR may require you to provide records for the audit by one or more of the methods specified in 30 CFR 1217.10.

PART 1217—AUDITS AND INSPECTIONS

7. The authority citation for part 1217 continues to read as follows:

Authority: 35 Stat. 312; 35 Stat. 781, as amended; secs. 32, 6, 26, 41 Stat. 450, 753, 1248; secs. 1, 2, 3, 44 Stat. 301, as amended; secs. 6, 3, 44 Stat. 659, 710; secs. 1, 2, 3, 44 Stat. 1057; 47 Stat. 1487; 49 Stat. 1482, 1250, 1967, 2026; 52 Stat. 347; sec. 10, 53 Stat. 1196, as amended; 56 Stat. 273; sec. 10, 61 Stat. 915; sec. 3, 63 Stat. 683; 64 Stat. 311; 25 U.S.C. 396, 396a-f, 30 U.S.C. 189, 271, 281, 293, 359. Interpret or apply secs. 5, 5, 44 Stat. 302, 1058, as amended; 58 Stat. 483–485; 5 U.S.C. 301, 16 U.S.C. 508b, 30 U.S.C. 189, 192c, 271, 281, 293, 359, 43 U.S.C. 387, unless otherwise noted.

Subpart A—General Provisions

8. Add § 1217.10 to subpart A to read as follows:

§ 1217.10 Providing Records During an Audit

(a) ONRR or an authorized State or Tribe may specify the method an auditee must use to provide records for all audits conducted under Chapter XII, statute, or agreement. The methods may include one or more of the following:

- (1) Inspect records at an auditee’s place of business during normal business hours;
- (2) Send records using secure electronic means. When requesting that records be provided electronically, ONRR or the authorized State or Tribe will specify the format in which the records shall be produced, directions for electronic transmission, and instructions to ensure secure transmission; or
- (3) Deliver hard copy records using the U.S. Postal Service, special courier, overnight mail, or other delivery service to an address specified by ONRR or an authorized State or Tribe.

(b) [Reserved]

PART 1220—ACCOUNTING PROCEDURES FOR DETERMINING NET PROFIT SHARE PAYMENT FOR OUTER CONTINENTAL SHELF OIL AND GAS LEASE

9. The authority citation for part 1220 continues to read as follows:

Authority: Sec. 205, Pub. L. 95-372, 92 Stat. 643 (43 U.S.C. 1337).

10. Amend § 1220.033 by revising paragraph (e) to read as follows:

§ 1220.033 Audits.

* * * * *

(e) ONRR or its authorized agent may require you to provide records for the audit by one or more of the methods specified in 30 CFR 1217.10.

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